

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE AND HEARING NOTICE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2016-0547

ISSUED TO  
JOE SILVEIRA  
MERCED COUNTY

PLEASE READ THIS HEARING PROCEDURE AND HEARING NOTICE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY

These Hearing Procedures supersede any previously issued Hearing Procedures for this matter except for previous deadlines for evidentiary submissions, which remain in effect.

The Central Valley Water Board has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team issued an Administrative Civil Liability (ACL) Complaint and initially proposed that a panel of the Board consider recommending the imposition of civil liability against Joe Silveira for the violations charged in the ACL Complaint. On 4 November 2016, a panel of the Board met to consider the matter. Following the recusal of a Board member, the Hearing Panel no longer had the required quorum of three Board members and consideration of the matter was deferred to a later date. The matter is now scheduled to be considered by the full Board on the following date:

5/6 December 2016  
Central Valley Water Board Offices  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California

At the hearing, the Central Valley Water Board will receive testimony regarding the alleged violation(s). After considering the evidence, the Board may assess the proposed civil liability, assess a higher or lower amount, decline to assess any liability, or continue the hearing to a later date. The Board's Meeting Agenda will specify whether the hearing will occur on December 5th or on the 6th. The Meeting Agenda will be posted on the Board's website at least ten days before the meeting, at the following address:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

**I. Hearing Participants**

Participants in the ACL hearing are considered either "Designated Parties" or "Interested Persons."

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Board, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others, at the discretion of the Board Chair.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Joe Silveira

In accordance with the Hearing Procedure issued on 8 August 2016, requests for designated party status were required to be received by 18 August 2016. This deadline has passed.

## **II. Hearing Time Limits**

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **35 minutes**
2. Joe Silveria: **30 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

At the hearing, additional time may be provided at the discretion of the Board Chair upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions and the responses to such questions, or during discussions of procedural issues.

In accordance with the Hearing Procedure issued on 8 August 2016, Participants who wanted additional time were required to submit their requests to the Advisory Team by 7 October 2016. This deadline has passed.

## **III. Documents in Evidence and Availability of Board Files**

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Board rules to exclude them. The file is available to the public and may be inspected or copied during regular business hours. Scheduling an appointment to review the file by contacting the Prosecution Team in advance is not required, but calling ahead will help ensure timely access to these documents. Documents will also be posted online at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

## **Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements**

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Board to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

Prohibition on Surprise Evidence: In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Board.

Prosecution Team's Evidence: The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

Designated Parties' (including the Discharger's) Evidence: All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

Rebuttal Evidence: "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Board's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

In accordance with the Hearing Procedure issued on 8 August 2016, the deadlines for these submittals have passed. However, all materials submitted in accordance with the Hearing Procedure issued on 8 August 2016 have been admitted into the administrative record and will be considered by the Board.

#### **IV. Miscellaneous Matters**

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: <http://www.waterboards.ca.gov>. Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

## **V. Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information on the following page).

**CONTACT INFORMATION: PRIMARY CONTACTS**

<b>Board Advisory Team*</b>	
Adam Laputz, Assistant Executive Officer 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4726 Adam.Laputz@waterboards.ca.gov	Andrew Deeringer, Attorney State Water Board, Office of Chief Counsel P.O. Box 100 Sacramento, CA 95812 Phone: (916) 322-3575 Andrew. Deeringer@waterboards.ca.gov
<b>Board Prosecution Team**</b>	
Brett Stevens, Senior Environmental Scientist 11020 Sun Center Drive, Suite 200 Rancho Cordova, CA 95670 Phone: (916) 464-4642 Brett. Stevens@waterboards.ca.gov	Kailyn Ellison, Attorney State Water Board, Office of Enforcement P.O. Box 100 Sacramento, CA 95812 Phone: (916) 445-9557 Kailyn. Ellison@waterboards.ca.gov
<b>Discharger</b>	
Joe Silveira 260 Air Park Rd Atwater, CA 95301	

\*The Board's Advisory Team also includes: Pamela Creedon, Executive Officer; Patrick Pulupa, Attorney III

\*\* The Board's Prosecution Team also includes: Andrew Altevogt, Assistant Executive Officer; Sue McConnell, Supervising Water Resources Control Engineer; Keri Yee, Associate Governmental Program Analyst

**IMPORTANT DEADLINES**

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the “Primary Contacts” table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

8 August 2016	Prosecution Team issues ACL Complaint and <a href="#">Hearing Procedure</a> .
Various	Deadlines Imposed by 8 August 2016 Hearing Procedure are considered valid and have all passed.
5/6 December 2016	Board Hearing